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Presiding Disciplinary Judge
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IN THE SUPREME COURT OF ARIZONA

In the Matter Of)	No. _____
)	
RULES 60, 64, and 65, RULES OF THE)	PETITION TO AMEND THE
SUPREME COURT OF ARIZONA)	<i>RULES OF THE ARIZONA SUPREME</i>
)	<i>COURT</i> REGARDING DISBARMENT
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INTRODUCTION

Pursuant to Rule 28, Rules of the Supreme Court, the Honorable William J. O’Neil, Presiding Disciplinary Judge of the Supreme Court of Arizona, petitions the court to amend the *Rules of the Supreme Court of Arizona* as reflected in the accompanying Appendix A.

Arizona is one of a majority of states that permits the reinstatement of lawyers who have been disbarred. The American Bar Association has long maintained its position through its Model Rules for Lawyer Disciplinary Enforcement that allows a disbarred lawyer to petition for reinstatement after five years from the date of disbarment. In Arizona that same position has long been existent. Notwithstanding, there are multiple states that preclude reinstatement after disbarment.

Effective January 1, 2011, this Court adopted changes to the attorney discipline system, including the establishment of the Office of the Presiding Disciplinary Judge. The Presiding Disciplinary Judge (PDJ) presides over attorney discipline and disability proceedings, and also issues orders and opinions as part of a three member hearing panel.

Supreme Court Rule 51 authorizes the Presiding Disciplinary Judge to recommend changes or additions to the rules of procedure for attorney discipline and disability proceedings. Disbarment is listed as a disciplinary sanction under Rule 61 which may be imposed. While Rule 46(e) defines the consequences of being a disbarred lawyer, there is otherwise no definition of disbarment within the rules. Rule 64 and 65 authorize a disbarred lawyer to apply for reinstatement after a period of five (5) years.

"Attorney discipline serves to protect the public, the legal profession, and the legal system, and to deter other attorneys from engaging in unprofessional conduct." *In re White-Steiner*, 219 Ariz. at 325 9, 198 P.3d at 1197 (citing *In re Scholl*, 200 Ariz. 222, 227 29, 25 P.3d 710, 715 (2001)). Another purpose is to instill public confidence in the Bar's integrity. *In re Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994) (citing *In re Loftus*, 171 Ariz. 672, 675, 832 P.2d 689, 692 (1992)).

There are aspects of competing interests in protecting these above listed goals and instilling public confidence in the Bar's integrity. Notwithstanding, there is no rule that outlines how or why disbarment is different from a five year suspension, either in sanction or for readmission. Five year suspensions have been imposed in Arizona rather than disbarment. See by example *In re Pappas*, 159 Ariz. 516, 768 P. 2d 1161 (1988) and *In the Matter of Rubenstein*, 178 Ariz. 550, 875 P.2d 783 (1994).

Five states mandate that all disbarments be treated as permanent, including Ohio, Oregon, New Jersey, Kentucky, and Indiana. Eight states allow disbarments to be permanent in some situations, allowing disciplinary authorities to recommend permanent disbarment in the most egregious situations. Those states include California, Louisiana, Alabama, Arkansas, Minnesota, Florida, Illinois, and West Virginia. Two states, Iowa and Kansas, consider disbarment permanent because applications for reinstatement are granted so infrequently. The remaining thirty-five states and the District of Columbia do not utilize permanent disbarment.

Your petitioner has been unable to locate any evidence of recent review or debate regarding the issue of the sanction of disbarment in Arizona. It is not the intent of the petitioner

to advocate for either of the proposed changes but rather to assure both public discussion and clarity within the rules regarding disbarment.

SUMMARY OF THE PROPOSED AMENDMENT

The proposed amendments to rules regarding disbarment are offered as alternate proposals to initiate a fuller discussion regarding the sanction of disbarment arising out of Rule 58, discipline matters. The amendment offers discussion points for alternative changes to the reinstatement process for disbarred lawyers. In a discipline system intended to be more transparent to the public, clear terminology gives greater clarity to the nature of a disbarment order. One alternative offers permanent disbarment without the opportunity for reinstatement. The other offers permanent disbarment as an additional sanction. There is no suggestion nor does the applicant suggest that in the event of approval of either of these alternatives or a modified alternative that the changes be applied retroactively to those members present disbarred. If disbarment is permanent or modified it should only apply prospectively, not retroactively.

REQUESTED TIME LINE FOR COMMENT AND REFERRAL TO A.R.C.

It is recommended that this petition be referred to the Attorney Regulation Advisory Committee (ARC) for its consideration, comments and recommendations. ARC was created in accordance with Administrative Order No. 2011-44, to assist the Supreme Court and the Chief Justice on issues relating to attorney regulation. ARC monitors the implementation of the discipline process in Arizona and is charged to review periodically the entire attorney admission and discipline system and to make recommendations for any needed changes. Expedited consideration is not requested.

DATED this 10th day of January 2014.

William J. O'Neil

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona

ORIGINAL ELECTRONICALLY filed
with the Clerk of the Arizona Supreme Court
this 10th day of January, 2014:

APPENDIX A

Alternative 1: Permanent Disbarment

Rule 64. Reinstatement; eligibility.

(a) *General standard.* Except as provided in paragraph (e)(2) of this rule, in order to be reinstated to the active practice of law, a suspended or disbarred lawyer or a lawyer on disability inactive status must show by clear and convincing evidence that the lawyer has been rehabilitated and/or overcome his or her disability, and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance. However, the requirements for reinstatement after summary suspension are as stated in paragraph (f) of this rule.

(b) *Presumptive disqualification.* There shall be a presumption, rebuttable by clear and convincing evidence presented at the hearing, that a lawyer who has been convicted of a misdemeanor involving a serious crime or of any felony shall be disqualified for reinstatement. "Serious crime" includes any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft, or moral turpitude, including a conspiracy, a solicitation of another, or any attempt to commit a serious crime.

(c) *Additional requirements.* If the applicant has been on disability inactive status or suspended for a period of five (5) years at the time the application is filed, or has been disbarred, in addition to other requirements of these rules relating to reinstatement, the applicant shall be required to apply for admission and pass the bar examination as required, unless the applicant meets the criteria to apply for reinstatement pursuant to paragraph (f)(1)(B) of this rule. An applicant subject to the additional requirements under this paragraph shall pay the fees required of an applicant for original admission to the practice of law in addition to fees, costs and expenses required of all applicants for reinstatement.

(d) *Reinstatement after disbarment.* A lawyer who has been disbarred may not apply for reinstatement, ~~as set forth in Rule 65, not sooner than ninety (90) days prior to the fifth anniversary of the effective date of the disbarment, but may not be reinstated until after the fifth anniversary of the effective date of the disbarment.~~

Rule 65. Reinstatement; application and proceedings.

(a) *Application for reinstatement.* Except as may otherwise be provided in Rules 63(g) and 64, a lawyer may be reinstated to active membership only as provided in this rule.

1. *Application.* The lawyer shall file with the disciplinary clerk an application for reinstatement, which shall be verified by the lawyer and accompanied by the appropriate fees

and proofs of payment required by paragraph (a)(3) of this rule. The lawyer shall serve the state bar with a copy of the application. The lawyer shall file with the application for reinstatement a written release or authorization for the state bar to obtain documents or information in the possession of any third party, including a physician, psychologist or psychiatrist. The application shall require the lawyer to provide information concerning the period of time between the date of ~~disbarment~~, suspension, or transfer to disability inactive status, and the date of filing the application. The required information shall include, but is not limited to, the following:

Alternative 2: Permanent Disbarment as an Alternative Sanction

Rule 60. Disciplinary sanctions.

(a) *Types and forms of sanctions.* Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment.* Disbarment or Permanent Disbarment may be imposed by judgment and order entered by the court, a hearing panel, or the presiding disciplinary judge. A lawyer who has been disbarred may apply for reinstatement as authorized by Rule 64(d). A lawyer who has been permanently disbarred may not apply for reinstatement. Permanent Disbarment shall only be imposed for the most egregious of circumstances.